IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 783 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
HARILAL KUNVARAJI DEDHIYA - Opponent(s)

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Appearance :
Mr.S.P.Hasurkar, APP for Appellant(s) : 1,
MR C.S.Popat for Mr.YOGESH S LAKHANI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order passed by learned Judicial Magistrate, First Class, Mundra, Kutch in Criminal Case No.160 of

1993 dated 17.4.1996 whereby the respondent was acquitted of the offence alleged under Sections 2(7A), (A),(C),(L),(M) read with Rule 5, Section 7(I)(V) and Section 16(1)(A)(I) of the Prevention of Food Adulteration Act (`the Act' for short)against him.

2. The prosecution case, in nutshell, was that the respondent was dealing in groundnut oil and on 30.7.92, at about 15.00 hours, a sample was collected from the shop of the accused by the complainant and after following the requisite procedure, the same was sent for inspection wherein it was found that the sample was adulterated. Accordingly a complaint came to be filed.

2.1. The prosecution has examined the complainant and other witnesses. After recording necessary evidence, learned Magistrate acquitted the respondent of the offences for which he was charged. It is against the aforesaid judgment and order, the present appeal has been filed.

3. Mr. S.P. Hasurkar, learned APP, appearing for the appellant submitted that the trial court cannot acquit the respondent accused on technical ground. He submitted that the sample was taken from the shop of the accused after following requisite procedure under the Act and on analysis by the Laboratory, it was found that the sample was adulterated, and therefore the impugned order is illegal and requires to be quashed and set aside.

4. Learned Advocate for the respondent submitted that the sample was not taken as per the mandatory provisions of the Act and other mandatory provisions are not followed. It is further submitted that after upholding the contention raised by the respondent accused, the trial Court has rightly given the benefit to the accused. It is, therefore, requested to dismiss this appeal.

5. The trial Court, after examining the evidence on record, has acquitted the accused on the ground that the prosecution has failed to prove the charges levelled against the accused. The trial Court has also come to the conclusion that the complainant has not taken sufficient care while taking the sample. The trial Court also found that there are several contradictions and defects in the prosecution case.

6. The scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16

of the said decision reads as under:

> “16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

7.1. I have heard learned Advocates for the respective parties. As a result of hearing and perusal of the record, it is found that no error apparent on the face of the record or any illegality is committed by the trial Court while passing the impugned order. In that view of the matter, the trial Court was justified in giving benefit of doubt to the respondent accused. In fact the prosecution has failed to prove the case against the respondent. It can be seen from the finding recorded by the trial

Court that there are several contradictions and defects in the prosecution case. In this view of the matter, I am in complete agreement with the finding recorded by the trial Court.

7.2. There is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> “... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.”

8. In the result, the appeal fails and does not merit acceptance. Hence, it is dismissed.

[K.S. JHAVERI, J.]

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